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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,237	03/03/2004	Manabu Fujita	17517	4668

23389 7590 05/14/2009

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EXAMINER	
SMITH, PHILIP ROBERT	

ART UNIT	PAPER NUMBER
3739	

MAIL DATE	DELIVERY MODE
05/14/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/792,237	FUJITA ET AL.	
	Examiner	Art Unit	
	PHILIP R. SMITH	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 March 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7,10-14,16 and 18-21* is/are pending in the application.

4a) Of the above claim(s) *1-6* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *7,10-14,16 and 18-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 U.S.C. 112, Paragraph Two

[01] The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

[02] Claims 7,10-14,16,18 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

[03] With regard to claim 16: this claim depends on a now cancelled claim. Appropriate correction is required.

[04] With regard to claims 7,10-14,16,18:

[04a] It appears that the recited “communication state” is a binary state in which the selected antenna is either in a transmitting state or a receiving state (second-to-last paragraph of claim 7). This squares with a skilled artisan's understanding of antennas, which can be controlled or detected as being in one of these two states.

[04b] However, at the end of claim 7, the recited device "selects an antenna… in a preferable transmitting and receiving state in accordance with the communication state.” It is not clear how detecting which of two states a plurality of antennas are in leads a skilled artisan to judge which of the antennas is in a ‘preferable’ state.

- For example, given 5 antennas, antennas 1, 2 and 4 are in a transmitting state; 3 and 5 are in a receiving state. Which antenna is preferable? The answer is not clear to a skilled artisan.

[04c] The missing link appears to be the 'data on the receiving strength' newly added to claim 7. A skilled artisan would understand which antenna is preferable if he was taught to detect the 'data on the receiving strength' for each one. Instead, the skilled artisan is being taught to detect 'the communication state', which appears to be a binary state of either transmitting or receiving, yielding no information about which antenna is 'preferable'.

[04d] If this is the Applicant's invention, then the claims can overcome the rejection under 35 USC 112 by striking all reference to 'communication state' and basing antenna preference on 'data on the receiving strength'.

Claim Rejections - 35 USC § 102

[05] The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

[06] Claims 7,10-14,16,18-21 are rejected under 35 U.S.C. 102(a) as being anticipated by Fujita (2003/0085994).

[07] With regard to claims 7,10-18: Fujita discloses a capsular medical system comprising:

[07a] a capsular in-body unit ("capsule type endoscope 3," [0074]) having a radio communication device ("antenna 23," [0074]) which is inserted or swallowed to be introduced to the body cavity;

[07b] an extracorporeal device ("external unit 5," [0070]) comprising a communication device for [bidirectional] communication with the in-body unit, which is arranged outside the human body;

[07c] a plurality of [at least two] antennas connected to the extracorporeal device ("multiple antennas 11a to 11d," [0070]) arranged near the body surface to communicate data to the in-body unit;

[07d] a switching device ("antenna switch 45," [0071]) which switches the antennas;

[07e] a detecting device ("receiving circuit 33," [0075]) which detects a communication state including a transmitting state where the extracorporeal device carries out transmission to the in-body unit, and a receiving state where the extracorporeal device carries out reception from the in-body unit, by controlling the switching device to switch the plurality of antennas at a predetermined time interval (sequentially switched antennas "11a, 11b,..., 11d" [0073]) to transmit a request for detecting a receiving strength with respect to the in-body unit, transmitting a request for detecting a receiving strength with respect to the in-body unit, transmitting the detection request to the in-body unit, and receiving data on the receiving strength from the in-body unit ("highest radio wave strength" [0075]).

[07f] wherein the extracorporeal device selects an antenna from the plurality of antennas in a preferable transmitting and receiving state in accordance with the communication state detected by the detecting device ("highest radio wave strength" as noted above).

[08] With regard to claim 10:

[08a] Fujita discloses an antenna selecting device which detects a receiving strength, in the in-body unit, of signals transmitted from at least two antennas and selects the antenna in a preferable receiving and transmitting state ("highest radio wave strength" [0075]).

[08b] Fujita discloses that a number n of antennas whose receiving and transmitting states are detected is less than a number N of all of the attached antennas at a time of antenna switching ([0132]).

[09] With regard to claim 11: Fujita discloses that the antenna whose receiving and transmitting state is checked is determined based on the antenna which currently receives data ("highest radio wave strength" [0075]).

[10] With regard to claim 12:

[10a] Fujita discloses an antenna selecting device which detects a receiving strength, in the in-body unit, of signals transmitted from at least two antennas and selects the antenna in a preferable receiving and transmitting state ("highest radio wave strength" [0075]).

[10b] Fujita discloses a storing device which stores the communication state detected by the detecting device ("memory 47," [0072]).

[11] With regard to claim 13:

[11a] Fujita discloses an antenna selecting device which detects a receiving strength, in the in-body unit, of signals transmitted from at least two antennas and selects the antenna in a preferable receiving and transmitting state ("highest radio wave strength" [0075]).

[12] With regard to claim 14:

[12a] Fujita discloses an antenna selecting device which detects a receiving strength, in the in-body unit, of signals transmitted from at least two antennas and selects the antenna in a preferable receiving and transmitting state ("highest radio wave strength" [0075]).

[12b] Fujita discloses that the detecting device controls the antenna selecting device to select the antenna when operation for connection for the transmitting to receiving is not establishable (as noted above).

[13] With regard to claim 16: Fujita discloses that the antenna whose receiving and transmitting state is checked is determined based on the antenna which currently receives data ([0074]).

[14] With regard to claim 18: Fujita discloses that the detecting device selects one of the at least two antennas arranged to communicate data to the in-body unit connected to the extracorporeal device, via the switching device, in response to a detected communication state corresponding to movement of the capsular in-body unit in the body cavity. This is the process described in [0075].

[15] With regard to claims 19-21: Fujita discloses a capsular medical system and method, the system comprising:

[15a] a capsular in-body unit ("capsule type endoscope 3," [0074]) having a radio communication device ("antenna 23," [0074]) which is inserted or swallowed to be introduced to the body cavity;

[15b] an extracorporeal device ("external unit 5," [0070]) comprising a communication device for bidirectional communication with the in-body unit, which is arranged outside the human body;

[15c] at least two antennas connected to the extracorporeal device ("multiple antennas 11a to 11d," [0070]) arranged near the body surface to communicate data to the in-body unit;

[15d] a transmission/reception switching section which switches communication direction with the in-body unit (sequentially switched antennas "11a, 11b,..., 11d" [0073]);

[15e] a timing signal generating section which generates, based on a predetermined time interval to transmit a request for detecting a receiving strength with respect to the in-body unit, a timing signal (electronic devices inherently have clocking signals);

[15f] an antenna selecting section which selects an antenna of the at lease two antennas in a preferable transmitting and receiving state that communicates with the in-body unit among at least the two antennas ("highest radio wave strength" [0075]).

[15g] As noted above, electronic devices such as the extracorporeal device disclosed by Fujita inherently have clocking signals (i.e. timers) which coordinate the activities of the device components. Therefore, all the processes identified above are inherently "related to" one another in that they are "based on" the timing signal.

Response to Arguments

[16] Applicant's arguments filed 3/23/09 have been fully considered but they are not persuasive. Applicant asserts that a timer and a clocking signal are different because clocking signals are "used in electronic circuits to synchronize processes, so that the processes are executed in an intended order and at a defined rate." This is precisely what the recited timer does.

Conclusion

[17] **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

[18] A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory

action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

[19] Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHILIP R. SMITH whose telephone number is (571)272-6087 and whose email address is philip.smith@uspto.gov. The examiner can normally be reached between 9:00am and 5:00pm.

[20] If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272 4764.

[21] Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Philip R Smith/

Examiner, Art Unit 3739

/Linda C Dvorak/

Supervisory Patent Examiner, Art Unit 3739